

MINUTES

WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting held in Commissioners Meeting Room,
Third Floor, Court House,
Boonville, IN
Monday, January 13, 2014, 6:00 P.M.

MEMBERS PRESENT: Guy Gentry, Richard Reid, Brad Overton, Bill Byers, Jeff Valiant, and Jeff Willis.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director, Jamie Key and Molly MacGregor, staff.

MEMBERS ABSENT: Amanda Mosiman

PLEDGE OF ALLEGIANCE: A moment of silence was held followed by the Pledge of Allegiance.

ELECTION OF OFFICERS:

Mrs. Rector called the meeting to order. Roll call was taken and a quorum declared present. She stated the first order of business is to elect a President of the Warrick County Area Plan Commission to serve during 2014.

Brad Overton made a motion to elect Guy Gentry as President. Jeff Valiant seconded.

Brad Overton made a motion to close the nominations and Guy Gentry be elected President by acclamation. The motion was seconded by Jeff Valiant and unanimously carried.

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The President said the next item on the agenda is to elect a Vice-President of the Warrick County Area Plan Commission to serve during 2014.

Brad Overton made a motion to elect Jeff Valiant as Vice-President. Jeff Willis seconded the motion.

Brad Overton made a motion to close the nominations and Jeff Valiant be elected Vice-President by acclamation. The motion was seconded by Jeff Willis and unanimously carried.

APPOINTMENT OF ATTORNEY FOR 2014

Mrs. Rector said Attorney Doll has agreed to be the Boards council for 2014. She said she and Mr. Gentry have gone over his contract and they have agreed that everything stays the same, including the dollar amount.

Richard Reid made a motion to appoint Attorney Doll as attorney for 2014. The motion was seconded by Brad Overton and unanimously carried.

ADOPTION OF RULES AND REGULATIONS:

The President said the next item was to adopt the rules and regulations.

Mrs. Rector said they are the same as last year.

The President called for a motion.

Brad Overton made a motion to adopt the rules and regulations. The motion was seconded by Jeff Valiant and unanimously carried.

APPOINTMENT TO THE BOARD OF ZONING APPEALS:

The President stated they need to make their Municipal Representative Appointment and it must be Jeff Valiant since he is the representative from the participating towns of Lynnville, Tennyson and Elberfeld.

Brad Overton made a motion to appoint Jeff Valiant as Municipal Representative to the Board of Zoning Appeals. The motion was seconded by Jeff Willis and unanimously carried.

The President said they need to make the County Representative Appointment. He stated there are two possible candidates this year; Jeff Willis or Bill Byers.

Brad Overton made a motion to appoint Jeff Willis as the County Representative to the Board of Zoning Appeals. The motion was seconded by Jeff Valiant and unanimously carried.

APPOINTMENT TO PLAT REVIEW COMMITTEE:

Mrs. Rector stated Guy Gentry has been on the committee since it began and he does a good job. She said the meetings are during the day on the second and fourth Wednesdays of the month so whoever does it will need to be available during the day.

The President stated the meetings do give him some foresight of what is coming to the area which helps him with his other job also.

Brad Overton made a motion to appoint Guy Gentry to the Plat Review Committee. The motion was seconded by Jeff Valiant and unanimously carried.

FEE SCHEDULE:

Mrs. Rector said there are no changes from last year.

Jeff Valiant made a motion to approve the fee schedule. The motion was seconded by Brad Overton and unanimously carried.

ANNUAL REPORT:

Mrs. Rector stated the annual reports are in their packets to review and it will be back on the agenda next month. She stated there was one permit difference from last year. She said the residential permits have remained steady. She stated they are starting to meet with several developers who are planning major subdivisions in the area. She said one of the problems is financing with the bank. She said they do have a thirty lot subdivision filed that will be coming before the Board next month. She said everything is staying steady and she believes we will see a good comeback. She added the problem right now is that they are running out of lots but it is starting to pick back up.

Brad Overton stated we are up from 71 that were issued in 2012 so there has been quite a bit more.

Mrs. Rector said yes, all of the lots in her subdivision have been sold and the county is doing a lot better than most places are doing.

Attorney Doll asked Mrs. Rector what happened in 2006. He said the total construction costs was half a billion dollars.

Mrs. Rector stated that was Alcoa. She said they came in with big structures that year.

Brad Overton asked Mrs. Rector if she has heard any complaints from builders that would hinder construction in Warrick County.

Mrs. Rector stated the only issue that she hears is having to post letters of credit for sidewalks. She said what they want, instead of posting letter of credits for them is having the sidewalks constructed before the certificates of occupancy are issued. She said that way they still have to put the sidewalks in but they don't have to go to the bank to get the letters of credit. She said that is the only issue that she hears. She said a certain individual likes to complain about the office and their policies so they formed a committee and met with a lot of the builders, developers, and engineers and went over all of the ordinances. She said there was nothing they came up with that they wanted changed at all, besides the sidewalks. She added that if somebody comes to her she would come to the Board about it and try to make the changes to make it easier for everybody.

MINUTES: Upon a motion made by Jeff Willis and seconded by Brad Overton, the Minutes of the last regular meeting held December 9, 2013, were approved as circulated.

SUBDIVISION FOR PRIMARY PLAT APPROVAL:

PP-13-10 – Reid Ridge Subdivision by William & Jacquelyn Pemberton ½ interest, and David & Dianna Harris ½ interest, owners of record and applicants, 7.208 acres located on

the E & W side of Kiddie Road approximately 260' E of the intersection formed by Kiddie Road (N1250) & SR 61 (W300), Lynnville Twp. (Complete legal on file.)

The President called for a staff report.

Mrs. Rector stated the subdivision is in the town limits of Lynnville and the only reason they had to do a major subdivision was because the property is zoned residential and you can only do a minor is agricultural or con zoning. She said they have requested a thirty day extension. She said what they ran into is there is a Lynnville water line in front of the lots. She said however, the water pressure was low so they installed a pump that would provide water to thirty homes. Mrs. Rector said they didn't get approved by IDEM. She said the person that operates the water utility has to be certified to operate the pump station and he is not. She said they have come down on the town and said they can't add any more to it, and the person operating the pump has to get certified. She stated so now the people on these two lots have to put in a well or cistern. She said they don't want to go to that expense of putting in a well or cistern and then turn around and have to hook into the existing lines, so they have not made up their minds yet of what they want to do. Mrs. Rector said there is also an issue with the right-of-way. She said there is a triangle piece that no one can figure out who owns it, including the town. She said the deeds cross over each other and they need more time to figure everything out. She added that she talked to Guy Gentry and they decided that the owners did not need to be present tonight.

Brad Overton made a motion to continue PP-13-10. The motion was seconded by Richard Reid and unanimously carried.

OTHER BUSINESS:

Formal Complaint ~ Allan Asher ~ 712 E. Gough Ave, Boonville, IN ~ Junk Salvage yard in an "R-1A" One Family Dwelling zoning district. Cease and Desist Notice and Notice to Appear sent June 17, 2013. Board ruled to have violation removed by January 10, 2014 or for Attorney to file suit.

Mrs. Rector stated the Board voted last month that if he didn't have the property cleaned up to turn it over to the Attorney. She said Sheila Lacer went over to the property Friday to take pictures and nothing was cleaned up. She stated the owner did call today and stated that he had cleaned a bunch of stuff up; however, he still has four cars there and is still in violation so she will turn it over to Attorney Doll.

The President stated he went by the property at 10:00 a.m. today and he did not see that anything was done.

Mrs. Rector said yes, she just wanted to report to the Board that it will be going to court.

Discussion: Ordinance Amending Comprehensive Zoning Ordinance

Mrs. Rector said this is one of those situations where you run into the Ordinance where people are not treated fairly and she would like to change that. She said an accessory building in the ordinance can only take up thirty percent of the required rear yard. She said if you have a one-

hundred by hundred foot lot, you can have a 750 sq ft building. She said if you have ten acres you can only have a 750 sq ft building if your lot is 100 ft wide. She said it does not matter if you have 20 acres, 10 acres, or one acre, you have to go by the 25 foot rear yard. She said years ago they used percentages, your rear yard was twenty-five percent of the lot depth, the side yards were ten percent, and it was twenty-five percent total. She said what she is proposing is if a lot exceeds 100 ft in depth we use $\frac{1}{4}$ th of the lot depth so that a person with a larger lot can have a larger unattached building. She added that a lot of people come in and have 5 acres of ground and we tell them that they cannot have that, no matter how much ground you have, and we don't want them to have to get a variance.

The President asked about the three feet to the side property line, he thought a home was six feet.

Mrs. Rector said yes, but an unattached accessory building is three feet. She added if anybody had any other suggestions she could change it but she has come to the Board to get permission to advertise it.

Attorney Doll said this creates two different measurements. He said if it is less than 100 ft. then the accessory building can exceed 30% of the required rear yard. He said if it is over 100 ft. in depth then we just have to have that the rear yard will be 25% of the lot depth.

Mrs. Rector said you still take the 30%.

Attorney Doll stated he doesn't think it says that it still takes the 30%. He said he thought if he had a lot over 100 feet in depth then all he has to have is 25% of his lot depth not used by his accessory building. He said if it is the intent that it can exceed 30% of the useable area is should be said there as well.

Mrs. Rector said yes, and help her with that because that is her intent.

Attorney Doll said the rear yard has to be at least 25% of the lot depth, why not use that.

Mrs. Rector said we could do that.

Attorney Doll said that would allow the bigger the lot, the bigger the accessory structure, but the question is if you care if it exceeds 30% of the rear yard or not.

Brad Overton asked when it ceases to become the accessory structure.

Jeff Willis added that if he has a house that's a 3000 sq. ft. house, and a ten acre lot with an 8000 sq. ft. building, is that an accessory structure.

Mrs. Rector stated it is an accessory structure. She said you can only have a principle building and accessory structure. She said you still can't cover over 40% of your lot, including the house and all accessory buildings. She said you have to figure all of that and you can't exceed 40% in most zonings, commercial zonings are different. She added there is still that stopping point of you can't put a 20,000 sq. ft. accessory building on there and cover the whole lot.

Attorney Doll asked do we need the 30% in the definition.

Jeff Willis said yes because it would still be 30% of the 25%.

Attorney Doll asked if we had a factual circumstance that we have to address with this.

Mrs. Rector said this happens all the time.

The President stated the way it reads now is 30% of the area of the required rear yard. He said so the required rear yard is 25 feet.

Mrs. Rector stated that you must have a rear yard established because some people want to build clear back to the back of their lot with their house.

Discussion ensued about rear yards and percentages required.

Mrs. Rector stated you have to have a required rear yard to figure the 30%.

Richard Reid said then you can only have 30% of that 25% but what about a septic tank.

Mrs. Rector said that is their problem. She said you have to have 2 ½ acres to have a septic system and our permits always say it is your responsibility where your septic system is at because there is no way that we know where they are.

Jeff Willis asked what the minimum lot size allowed.

Mrs. Rector said it is according to the zoning. She said residential are small, around 6,000 square feet and agricultural is ½ acre but the only way that can be done is if they are one sewer, otherwise they need 2 ½ acres for the septic. She added that she doesn't think it is fair that people with five acres of ground can't build a bigger building than a person with a 75 by 100 foot lot. She added that you have to have a required front yard, rear yard, and side yards.

Richard Reid said and the rear yard is 25%.

Mrs. Rector said right now it is 25 feet.

The President asked how are people building pole barns now.

Mrs. Rector stated they normally can't but sometimes they just do.

Attorney Doll asked why not amend the rear yard to be 25%. He said that would fix everything.

The President asked what about the shallow lots, that won't work for them.

Attorney Doll stated then this won't work because that's what this sets it as, it shall be 25% of the lot depth.

Mrs. Rector said it says if it exceeds 100 feet, otherwise it's 25 feet.

Attorney Doll stated what if he had an 80 foot deep house.

Mrs. Rector said then you would be covering up too much of your lot because you can only have so much lot coverage.

Attorney Doll stated he thinks they need to think about this. He added that the only question tonight was to advertise it.

Mrs. Rector said yes, we need permission to advertise amending it, and we don't have to advertise the body only the purpose of it. She added that she can make drawings for the next meeting.

The President said he would like to see that because he does not totally understand this.

Mrs. Rector stated if you had a 100 by 100 foot lot you could have a 750 sq. ft. accessory building. She said if you had 200 by 100 then $\frac{1}{4}^{\text{th}}$ of 200 is 50, take 50 times 100 times 30% which would be 1500, otherwise right now that 100 by 200 ft. lot is the same as the 100 by 100 ft. lot.

The President asked how does a person that owns 10 acres have the big pole barns.

Mrs. Rector said a lot of them are farmers who are exempt. She added that a few years ago the percentage was the requirement; all of the setbacks were percentages until we had an engineer redo the Ordinance.

Richard Reid said he thought it would be pretty safe to have the 25%.

Jeff Willis asked why we limit how much people build on their property.

Bill Buyers stated the purpose of this is to protect the neighbors.

The President said this is like what happened in Mansfield Subdivision. He said that individual had a small lot and built a big building.

Mrs. Rector said she doesn't like any more regulations than they already have, but if it worries you to think that somebody will build a 10,000 sq. ft. building, you can maybe limit the size, but if they have 10 acres and it fits in there then why not let them. She added you won't have many people doing that besides farmers anyways.

Richard Reid said so if you have $2\frac{1}{2}$ acres in the rear, and 30% would still be 32,000 sq. ft. He said that's a heck of a pole barn.

Mrs. Rector said she came up with the 25% because that is how it used to be and it always worked before.

The President said he doesn't like the way it reads now, they could only have that 750 sq. ft. building. He said so if we go ahead and give permission to advertise then it could come back to the next meeting and we can fine tune the language.

Mrs. Rector said yes. She said she can change it and draw up drawings for the Board to clarify.

Jeff Willis made a motion to advertise the amendment to the ordinance. The motion was seconded by Jeff Valiant and unanimously carried.

ATTORNEY BUSINESS:

Attorney Doll stated he provided Mrs. Rector with a 2 page copy of the summary of the newest developments of 2013 of land laws. He said he'd be happy to let them read that and if they have any questions. He said he thinks they can see the implications of the federal overview of zoning concerning religious groups, now that will include religious hospitals.

Mrs. Rector said but they still have to get permits but will not need a special use. She said we basically have taken care of this unless they need a Variance, because it will hard to deny them that.

Attorney Doll said yes, property values, traffic congestion, and parking problems are not good reasons to deny a Variance.

The President asked how traffic congestion could not be a good reason.

Attorney Doll stated that is what the Federal Court said.

Mrs. Rector said it says it is up to the county to take care of any traffic problems; we can't deny them if the county has the means to fix it themselves.

Brad Overton stated that he was looking at the permit numbers from 2013. He said if you look at the commercial permits last year we had 69, which is the fourth highest total since 1980, and if you look at the commercial costs from last year, that is the 11th or 12th highest commercial costs. He said that is a good indication of what's going on. He said the single family permits are down a little but he said the commercial permits indicate that some positive things are going on.

Mrs. Rector said yes, it is looking good, and we may be getting a big box store and hopefully the IU medical center.

EXECUTIVE DIRECTOR BUSINESS:

Unsafe buildings discussion.

Mrs. Rector said the last couple of months we have been discussing the unsafe buildings. She said Don Williams has asked her to go with him Wednesday to meet with Debbie that does the grants for the county. She said the US Treasury has granted some funds to take care of these situations. She said Don wants her to go with him to meet with her to go over the regulations of the county getting this money, what we have to do and so forth. She said at this point she thinks the Commissioners have to take over the property to do anything but at least we are getting somewhere. Mrs. Rector said they will put it on for next month and she will get as much info as possible from her meeting Wednesday.

Discussion of Irrevocable Letters of Credit.

Mrs. Rector stated we ran into a situation with letters of credit. She said the Commissioners are allowing extensions which are fine but they had one where they had to draw their letter. Mrs. Rector said she has tried to tell them that they need time to go draw the money. She said it was 5/3rd bank, whose main office is in Cincinnati. She said when they got the letter of credit they were told they could withdraw the money from any 5/3rd bank. She said they called them up to tell them that they were coming to get the money and they said "Sorry, you will have to go to Cincinnati to get your money and you need to do it within 24 hours or we will not give you the money at all." She said they sent them a letter that they were drawing and it kept going back and forth and she did not think they were going to let them have the money but they did. She said her question is should we, from the bank, have a letter from them that we can draw from a local bank.

Rick Reid said sometimes they don't come in to file these things until almost the day of so we don't have much time to do these things.

Mrs. Rector said maybe this is a question for the Commissioners and their attorney, but she is responsible for drawing these and it bothers her that she may not be able to do that.

Rick Reid said it may be a matter of filling out another form.

Attorney Doll asked how many foreign banks do we have holding letters of credit.

Mrs. Rector said most of them are local banks, but just like Old National, they could tell us to get it from Florida.

Attorney Doll said Warrick County said we could approve letters of credit that could only be pulled from local banks. He said but like the big complex being built right now, that bank is probably out of Indianapolis.

Mrs. Rector said she thought Warrick County might be a bit much because there are more banks in Evansville.

Attorney Doll suggested a trigger day 30 days before they expire.

Mrs. Rector said we do. She said we send them a letter 60 days before they expire, they are supposed to go to the Commissioners meeting 30 days before they expire, and they are supposed to get them in to them 10 days before they expire. She said but they are given extensions, or they don't get them in and we are calling the developers to tell them to get the letters in. She said we do this almost every day, we have to hold their hands.

Attorney Doll said the only solution he sees is to have a drop dead completion date that is 30 days prior to the expiration date that is not continuable.

Mrs. Rector said we do but she cannot control the Commissioners if they continue them.

Attorney Doll said he understands but if the County loses a letter of credit and we have an angry subdivision with something that is not built that was supposed to be built and now the tax payers will have to figure out if they can build it because the letter of credit expired before we could get it collected. He said that would be an expensive education but that's the only solution he can think of otherwise you will really tie the hands of the economic development in the county that would preclude the box store or the IU Med Center if it comes because who know where their letters of credit will be from.

Brad Overton said he would like to think that the Commissioners could come up with a reasonable solution.

Rick Reid said it comes back to Area Plan on making sure they are in here at the proper time.

Mrs. Rector said we try but she can't make the engineers get it in to us, and they are supposed to have them in a week before the meeting so Bobby can go out there and do an inspection, and this is all broke down in a letter they get. She said even with really good developers, they have to hold their hands, and they have been doing it for years.

Rick Reid said he usually votes no.

Mrs. Rector said I know you do. She said that is why some of those roads are getting torn up. She said it has been so long with no top coat on them and you let people drive on them for ten years and then they are falling apart. Mrs. Rector said it is their responsibility in the Planning Commission which is why she is bringing this up but she may need to have a workshop with the Commissioners.

Rick Reid said she should point that out in the meeting that the letter of credit is about to expire and it has to be done as a drop dead right now.

Mrs. Rector if you look back at the most recent meeting she did say something and that was almost \$167,000.

Attorney Doll said if we ratchet the drop dead deadlines forward 2 weeks it would give us the flexibility not to run around at the last hour and deal with a bank that obviously doesn't want to pay Warrick County the money, and put the artificial road blocks up.

Rick Reid stated you could almost say that you won't take a letter of credit from 5/3 Bank.

Mrs. Rector said they are the worst ones to deal with.

Jeff Willis asked if they could charge more for an out of state bank.

Attorney Doll said the letter of credit is applied to the cost of the improvement.

Jeff Willis asked if we could have an attorney go pick up the letters of credit.

Mrs. Rector stated the main thing is the time periods and we need to start sticking to them. She said most of the developers are her friends and she's grown up with them, so it takes a lot for her to tell them that she is going to draw their money while they are telling her that they have told the bank already, and then she calls the bank and they haven't been there yet. She said so this is what we've gone through and it's both of their faults. She said we copy the bank, the engineer, and everybody on these letters.

Richard Reid suggested pushing the date back two weeks to give them more time.

Attorney Doll suggested putting wording in bold that states unless these steps are completed by a specific date we will draw the letter of credit on this day.

Bill Byers asked if we could put the wording in there that says we can draw the money at any branch bank of that bank.

Attorney Doll said he is not sure they could do that unless they deemed that an unacceptable letter of credit and that would take us making sure that is in every single one.

The President stated that doesn't make sense that they would have to go to Cincinnati to pull that letter of credit.

Attorney Doll said they have a failing builder who isn't good for the money. He said they don't want us to get the money from the bank because they don't have a pocket to pull from. He said so they try to throw roadblocks at us in the hopes that we will miss the deadlines; that is their whole goal.

Mrs. Rector stated she can bring the letter that they send out and see if there is anything they can add in there to protect us. She said she will email it to everybody and see if they have any suggestions.

Rick Reid made a motion to adjourn the meeting. The motion was seconded by Jeff Valiant, unanimously carried. The meeting adjourned at 6:55 p.m.

Guy Gentry, President

ATTEST:

Sherri Rector, Executive Director